

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 30.03.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.3714 of 2002

Employees State
Insurance Corporation,
rep. by its Joint Regional Director,
143, Sterling Road,
Chennai-600 034. Appellant/Respondent

vs.

M/s. ITC Limited,
Packaging and Printing Division,
Thiruvottiyur High Road,
Chennai-600 019. Respondent/Petitioner

Appeal against the order of the learned single Judge, dated
02.08.2002, passed in W.P. No.14828 of 1995.

WP No.14828/95: This Writ Petition filed under Art.226 of the
constitution of India to issue a writ of nature of Certiorarified
Mandamus to call for the records of the proceedings of the
Respondent in the impugned Notice No.51-3611-83/ Ins.VI dated
19.9.1995 of the Respondent, and to quash the same as being
illegal and without jurisdiction and direct the Respondent to drop
further proceedings thereon.

For Appellant : Mr.K.C.Ramalingam

For Respondent : Mr.Dwarakanathan

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

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Aggrieved by the order of the learned single Judge, dated
02.08.2002, passed in W.P. No.14828 of 1995, Employees State
Insurance (E.S.I.) Corporation, represented by its Joint Regional
Director, Chennai-34, has filed the above Writ Appeal.

2. The respondent herein/I.T.C. Limited filed W.P. No.14828 of 1995, challenging the notice dated 19.09.1995, issued by the Joint Regional Director, E.S.I. Corporation, on several grounds. The learned single Judge, by order dated 02.08.2002, after finding that the impugned show cause notice is the one which covers the same period for which a notice had been issued four years earlier, which ended in an order under Section 45-A of the Employees State Insurance Act (ESI Act), directing the employer to pay a sum of Rs.30,085.75, and further finding that since the amount ordered had been paid by the employer, the authority is not justified in issuing the notice dated 19.09.1995 relating to the same period, ultimately, quashed the impugned notice as unsustainable.

3. Mr.Dwarakanathan, learned counsel appearing for the respondent-Management, by drawing our attention to the earlier show cause notice dated 28.06.1991 as well as the impugned show cause notice dated 19.09.1995, contended that inasmuch as the issue relating to E.S.I. contribution for the period 1989-1990 had already been settled by order, dated 24.12.1991, passed by the authority under Section 45-A of the ESI Act and the amount as per the said order had also been paid by the Management, the authorities are not justified in once again raking up the very same matter by issuing the show cause notice dated 19.09.1995. He also submitted that, on proper verification of the materials and taking specific note of the fact that the impugned notice does not contain any additional reason or material, the learned Judge rightly quashed the show cause notice dated 19.09.1995; hence, there is no scope for interference.

4. In the light of the assertion of the learned counsel for the Management, we verified the earlier show cause notice dated 28.06.1991 as well as the impugned show cause notice dated 19.09.1995. It is not in dispute that both the notices relate to non-submission of return of contributions for the period 1989-90. It is useful to refer below the relevant details furnished in the earlier show cause notice dated 28.06.1991.

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" And whereas it is proposed to determine and recover the amount of contribution payable in respect of the employees of your factory / establishment under Section 45-A of the Act as under.

C A L C U L A T I O N

Sl. No.	Nature of dues	Period From To		Amount of Contribution payable	Basis for Calculation 7.25% on
1	2	3-a	3-b	4	5
1.	Account Head Code				
1.	029 Construction				
	Account	1.4.89	31.3.90	24,648.43	3,39,978.37
	(building)				
2.	030 -do- (machinery)	"	"	4,50,821.96	62,18,234.00
3.	205 Repairs to Building	"	"	2,97,463.26	
					1,02,941.65
4.	206 Repairs to Machinery"	"	"	1,95,543.56	26,97,152.60
5.	215 other repairs	"	"	1,78,872.74	4,67,210.29
				Rs.11,47,349.95	1,58,25,516.94
				or Rs.11,47,350/-.	

And whereas it is proposed to afford M/s. Imperial Tobacco Co. Ltd. an opportunity to show cause against the said determination and recovery."

Pursuant to the same, ITC Limited submitted their explanation and ultimately, on 24.12.1991, the competent authority passed orders under Section 45A of the ESI Act. The Order, which is available at page Nos.13 to 23 shows that, on verifying and considering the materials placed, the authority determined a sum of Rs.30,085.75 as the amount payable by the Management. It is the claim of the Management that, pursuant to the same, the said amount had been paid.

4-A. Now, let us consider the impugned show cause notice dated 19.09.1995, which is available at page No.27 of the typed-set of papers. It also relates to non-payment of E.S.I. contributions in full from April, 1989, to March, 1990. The following details, furnished in para No.4 of the said show cause notice, are relevant,

" 4. And whereas it is proposed to determine and recover the amount of contribution payable in respect of the employees of your factory under Sec.45-A of the Act as under.

C A L C U L A T I O N

Sl. No.	Nature of dues	Period From	To	Amt. of contn. payable	Basis for cal- culation
Accounts Head Code					
1.	029 Construction Account (Building)	1.4.89	31.3.90]		
2.	030 -do- (Machinery)	"	"]		
	Rs.11,47,349.95	Rs.1,58,25,516.94			
3.	205 Repairs to Building	"	"]		
4.	215 Other repairs	"	"]		
5.	206 Repairs to Machinery	"	"]		
(excluding the amount already paid)					

On receipt of the above notice, the Management submitted their reply, pointing out the order dated 24.12.1991 passed under Section 45A of the Act as well as payment of the amount as ordered therein. Since the said explanation was not accepted and the Joint Regional Director, E.S.I. Corporation, issued the letter dated 13.10.1995, directing the Management for production of records, they filed the Writ Petition, challenging the impugned notice.

5. As rightly pointed out by Mr.Dwarakanathan, learned counsel appearing for the respondent-Management, the show cause notice, dated 28.06.1991, and the order dated 24.12.1991 clearly show that the issue relating to non-payment of contributions to E.S.I. for 1989-1990 had been settled. While so, without assigning any reason or pointing out any defect or infirmity in the earlier proceedings, dated 24.12.1991, it is not clear as to how the authorities are justified in issuing the notice dated 19.09.1995, calling upon the Management to show cause as to why assessment should not be made as proposed therein. We verified

both the notices and the earlier order passed.

6. Though Mr.K.C.Ramalingam, learned counsel appearing for the appellant, submitted that the Officer, who passed the order under Section 45A, colluded with the Management and slashed the amount according to his whims and fancies, as rightly pointed out and observed by the learned Judge, nothing is reflected in the impugned show cause notice, dated 19.09.1995, suggesting lacuna or error in the order passed by the Officer so as to justify the issuance of the notice. Though we are conscious of the fact that there is no limitation for passing orders/reopening a case under Section-45A, when the matter in issue had been concluded after proper enquiry and by following procedure, in the absence of any material or procedural flaw, the same cannot be reopened. Even otherwise, nothing prevented the Joint Regional Director from mentioning the conduct of the then Officer, who passed the order, infirmities if any in his order, and giving an opportunity to the Management to set right the anomaly said to have been committed by their own officer. As observed by the learned Judge, there is no iota of evidence or even reference to the alleged conduct of the officer, and the present notice proceeds as if no action was taken in respect of non-submission of return of contributions for the year 1989-1990. We accept the stand taken by the Management and we are satisfied that the learned Judge is perfectly right in accepting their case and quashing the impugned notice dated 19.09.1995.

7. In these circumstances, we do not find any error or infirmity or valid ground for interference. Consequently, Writ Appeal fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Jl.

To

The Joint Registrar Director,
Employees State Insurance Corporation,
143, Sterling Road, Madras 600 034.

+1cc to MR.K.C.Ramalingam, Advocate Sr 20454
+1cc to Mr.Meenakshi Sundaram, Advocate Sr 20559

SGL (CO)
km/17.5.

W.A. No.3714/2002



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